

**BellSouth**  
Suite 900  
1133-21st Street, N.W.  
Washington, D.C. 20036-3351

whit.jordan@bellsouth.com

**W. W. (Whit) Jordan**  
Vice President-Federal Regulatory

202 463-4114  
Fax 202 463-4198

November 18, 2002

EX PARTE

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. S.W.  
Washington, D.C. 20554


Re: WC Docket No. 01-338

Dear Ms. Dortch:

On November 15, 2002, Bob Blau and the undersigned, both representing BellSouth, met with Jordan Goldstein from Commissioner Copp's office and Dan Gonzalez from Commissioner Martin's office separately in connection with the above referenced proceeding. During these meetings, BellSouth discussed the need for certain relief for switching, transport and loop unbundled network elements. The attached material was used during these meetings.

I am electronically filing this notice and the accompanying attachment in the above referenced proceeding. Please call me if you have any questions.

Yours truly,



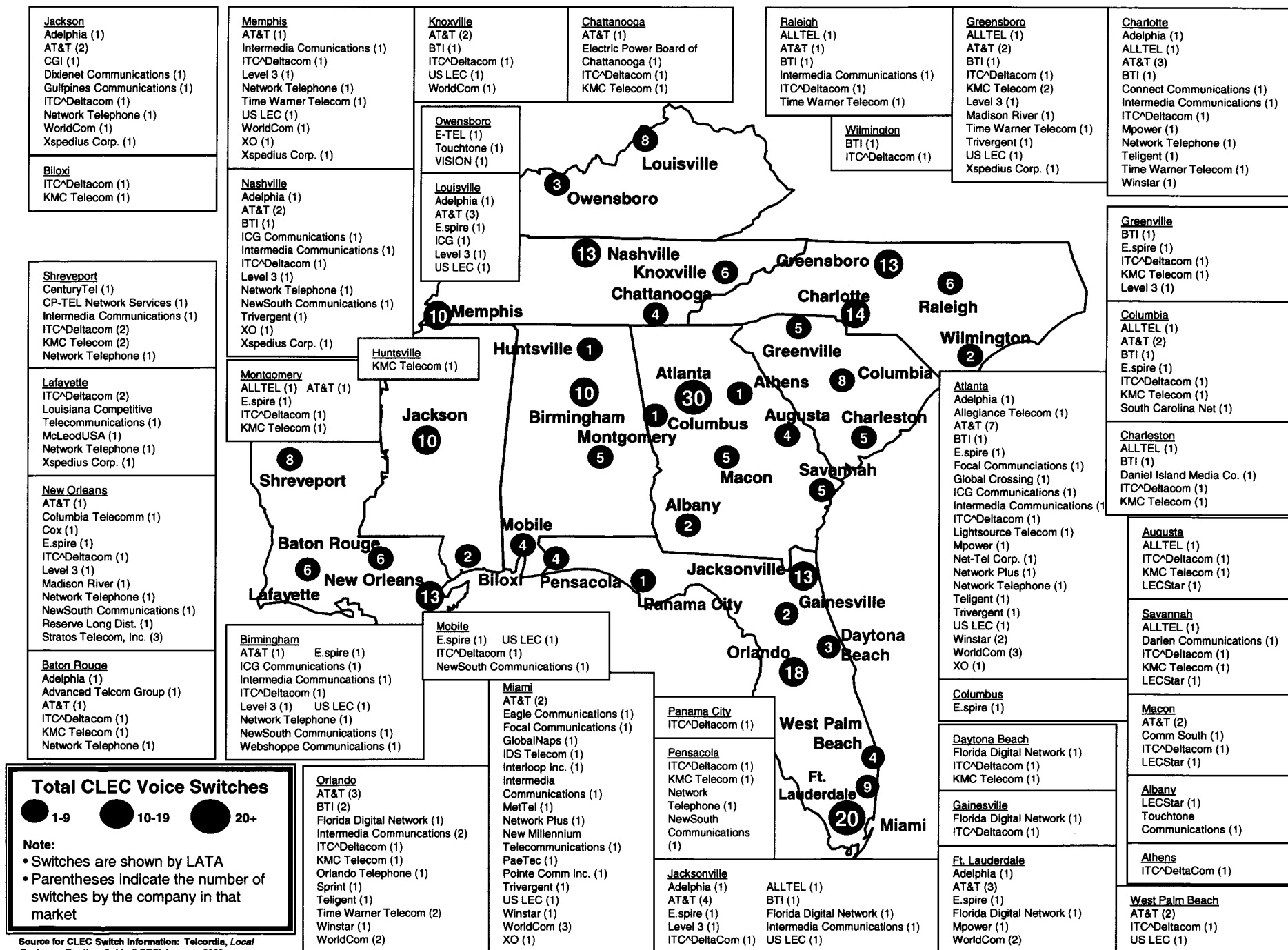
W.W. Jordan

Attachment

Cc: Jordan Goldstein  
Dan Gonzalez

# What Relief is Needed for Switching

- Per the Time Warner Telecom (TWTC)-BellSouth framework, switching should be removed from the UNE list everywhere with regards to business end-user customers
  - Rationale: “CLECs are not impaired...due to the availability of competitive alternatives” TWTC-BellSouth ex parte to FCC
- Switching associated with residential customers should also be removed from the UNE list, as the same switches are used to serve both residence and business customers
- Transition for all UNE switching
  - No new UNE-P from effective date of FCC Order forward
  - Brief transition period for embedded base of UNE-P (no longer than 6 months)
  - BellSouth would continue to make market-priced switching available in all areas

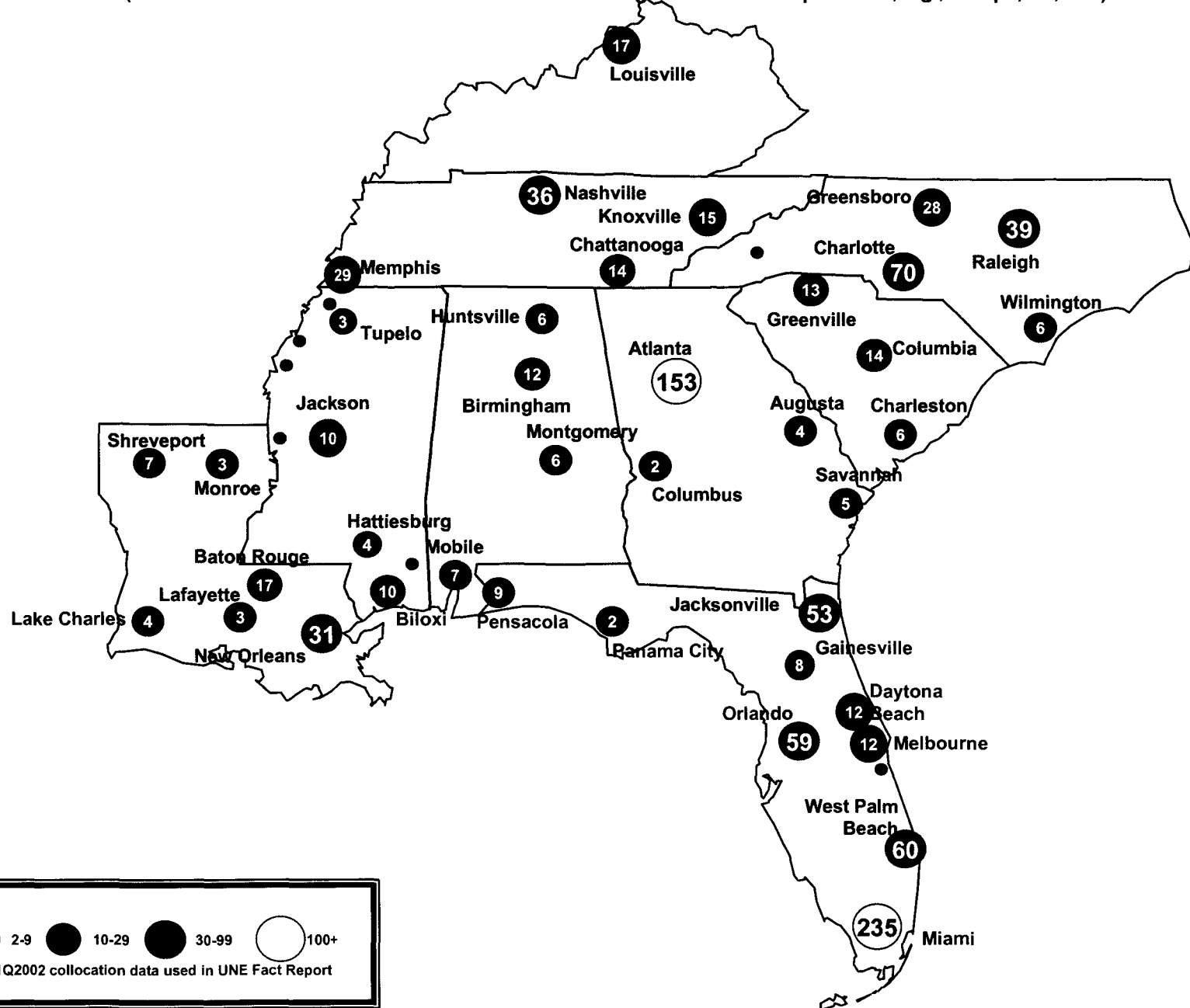


# What Relief is Needed for Transport and Loops

- Eliminate unbundling requirements for transport and loops where alternatives exist
- Retain the “safe harbor” constraints for loop-transport combinations and stand-alone elements
- Commingling issues must be resolved in a manner that does not destroy special access with no benefit to local exchange competition

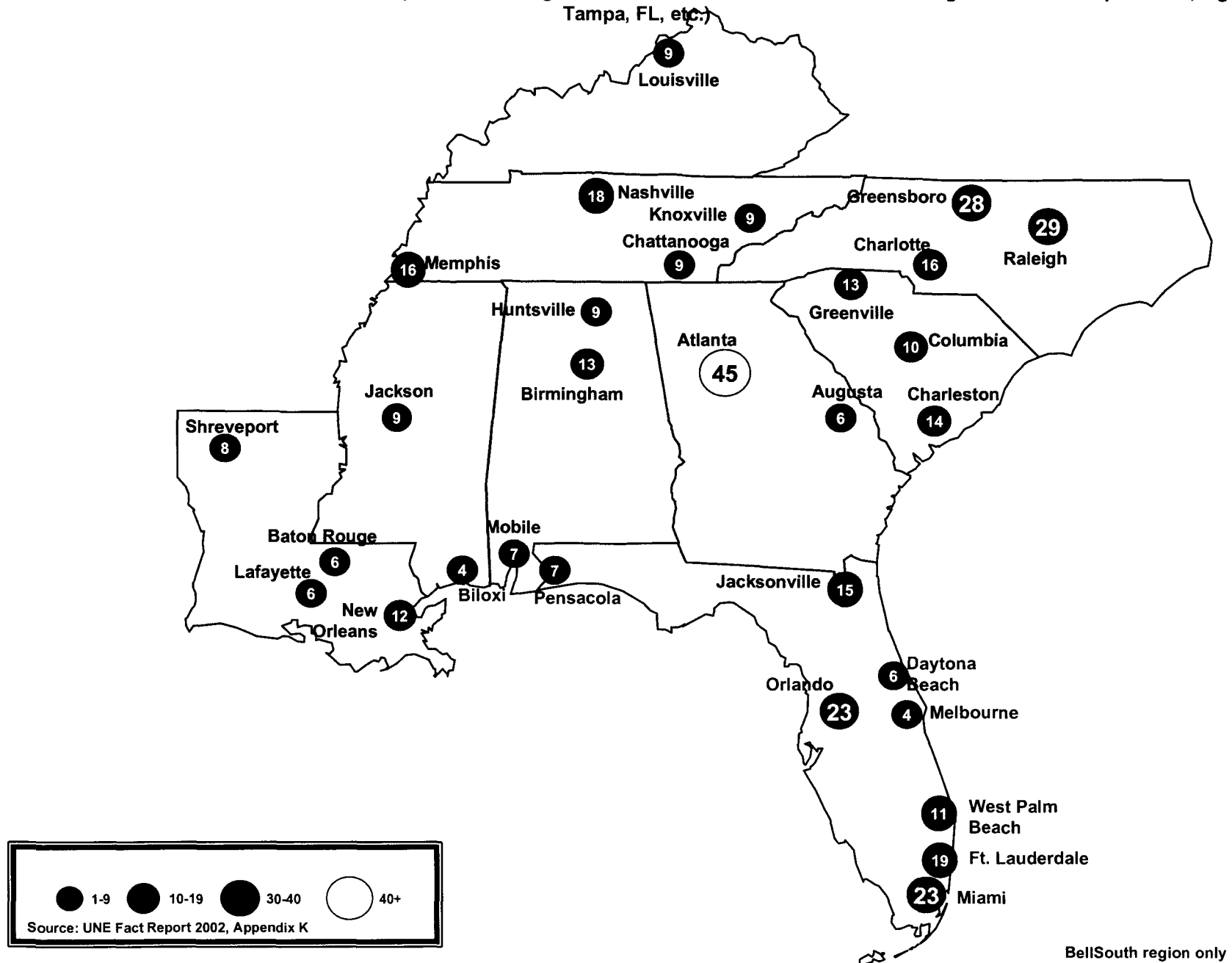
# Fiber-Based Collocation by MSA

(Excludes MSAs where BellSouth does not have a significant service presence, e.g., Tampa, FL, etc.)



# Operational CLEC Fiber Networks by MSA

(BellSouth MSAs Ranked in National Top 150, excluding MSAs where BellSouth does not have a significant service presence, e.g., Tampa, FL, etc.)



# The Time Warner Telecom - BellSouth Framework Provides for Relief for Transport

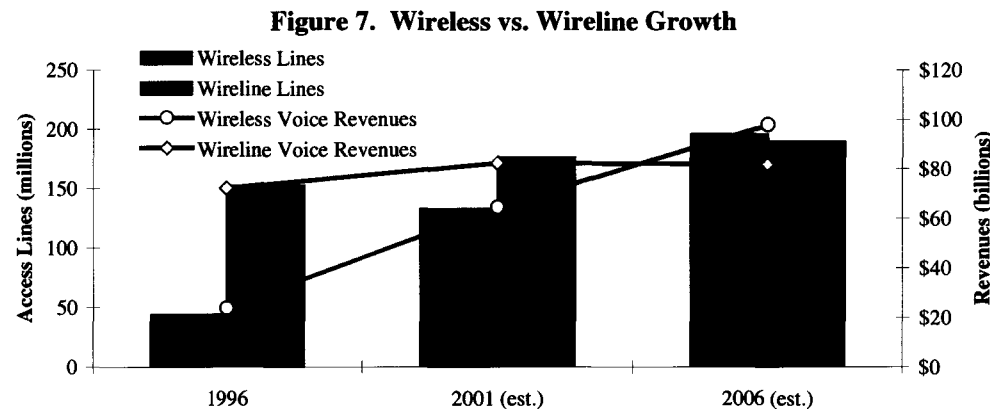
- “Remove dedicated transport UNE where 3 or more competitive transport providers exist in either A or Z wire center”
  - Page 3 – TWTC-BellSouth Joint Ex parte
- Rationale: CLECs are not impaired where that amount of competition is present
- All carriers, both ILECs and CLECs, have a strong disincentive to invest where UNEs are mandated
- Safe Harbors must be retained

# Providing Relief in the Top 100 MSAs Is a Comparable Alternative

- The TWTC-BLS Framework would require a data showing for each area
- Providing relief in the top 100 MSAs would provide comparable relief without the initial data showing, assuming Safe Harbors are retained in all areas
- The FCC could use the TWTC-BLS bright-line test for areas beyond the Top 100 MSAs



# Wireless Carriers Are Not Impaired Without UNEs



Source: JP Morgan H&Q. See Appendix M.

(Source: UNE Fact Report 2002, filed with BellSouth's Comments, CC Docket No. 01-338)

- Wireless Carriers are not impaired – they are serving the market today and have over 130 million line equivalents
- “[M]andating the element’s unbundling in every geographic market and customer class, without regard to the state of competitive impairment in any particular market...[will result in UNEs being available] to CLECs in many markets where there is no reasonable basis for thinking that competition is suffering from any impairment of a sort that might have [been] the object of Congress’s concern.” – D.C. Circuit Court, USTA v. FCC

# States Cannot Require Unbundling Where the FCC Has Found Non-Impairment

- Under Section 251(d)(2), the FCC alone is responsible for evaluating impairment and determining which network elements should be made available
- As USTA makes clear, unbundling in the absence of impairment creates severe social costs, including diminished investment, innovation, and facilities-based competition
- Consequently, once the FCC has found non-impairment or otherwise declined to mandate unbundling, the states may not disregard that determination
- Sections 251(d)(3) and 261(b) confirm that the states have no authority to order unbundling in such circumstances
  - These provisions only permit state requirements that are consistent with Section 251 and do not substantially prevent implementation of Section 251 and the purposes of the Act's local competition requirements
  - Because overbroad unbundling is antithetical to the Act's purposes and Section 251 leaves unbundling determinations to the FCC, state decisions that "reverse-preempt" an FCC decision not to require unbundling are void on their face
- Additional policy concerns likewise support FCC occupation of the field with respect to network unbundling
  - The industry needs more regulatory certainty, not less
  - The FCC correctly has sought to prevent wasteful and duplicative state proceedings, yet several PUCs already have adopted or proposed additional unbundling requirements at the urging of CLECs

# Key Conclusions

- If UNE Switching is eliminated, CLECs could use UNE-L and transport to reach a centralized switch
- Transport Relief can accompany Switching Relief:
  - Any CLEC providing local service to end-user customers will not be hampered by local service use restrictions
    - Local usage safe harbors need not be removed
  - Transport UNE relief would have minimal impact on CLECs serving end-user customers
    - Relief must be granted where there is no impairment
  - Connection of voice-grade service loop UNEs to high capacity market-priced interoffice transport could eliminate the need for CLEC collocation in end-offices